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The Wallick Companies

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WALLICK CONSTRUCTION CO.

WALLICK PROPERTIES, INC.

PARTNERSHIP EQUITIES, INC.

August 2, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D. C. 20544

Re: Promotion of Competitive Networks in Local Telecommunications Markets,
WT Docket No. 99-217; Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

We write in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. We enclosed six (6) copies of this letter, in addition to this original.

We are concerned that any action by the FCC regarding access to private property by large numbers of communications companies may inadvertently and unnecessarily adversely affect the conduct of our business and needlessly raise additional legal issues. The Commission's public notice also raises a number of other issues that concern us.

Background

Wallick Properties, Inc. is in the commercial and real estate business. We manage in excess of 10,000 residential units in a five-state area. We have found that local building codes and ordinances have provided adequate protection and service for our residents.

Issues Raised by the FCC's Notice

First and foremost, we do not believe the FCC needs to act in this field because we are doing everything we can to satisfy our residents' demands for access to telecommunications. In addition, the FCC's request for comments raises the following issues of particular concern to us:

1. **FCC Action Is Not Necessary.** We are very much aware of the importance of telecommunication services to our residents and we would not jeopardize our revenue stream by actions which would displease our residents and cause them to vacate. We find that our local residential rental competition is extremely strong and that we find that we must do everything possible to be on the cutting edge of marketing our apartment units. This does include providing appropriate telecommunication access for our residents.

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2. **“Nondiscriminatory” Access.**

- There is no such thing as non-discriminatory access: there are dozens of providers in our market area, but limited space in the buildings mean that only a hand full of providers can install facilities in our buildings.
- “Nondiscriminatory” access discriminates in favor of the first few entrants.
- The building owner must have control over space occupied by providers, especially where there are multiple providers involved.
- The building owner must also have control over who enters the building: Owners face liability for damage to building, leased premises, and facilities of other providers, and for personal injury to residents and visitors. The owner is also liable for safety code violations. Qualifications and reliability of providers are real issues.
- We believe that a new company without a track record poses a greater risk than an established one. We also believe that the concerns of owners of commercial space differ from that of residential and/or shopping centers. One single set of rules will not cover all properties.
- I wish to remind you that building owners often have no control over the terms of access for Bell Companies and other incumbents: these access rights were established in a monopoly environment. The only fair solution is to let the new competitive market decide and allow owners to negotiate terms of all access contracts. The owners cannot be forced to apply old contracts as the lowest common denominator when the owner had no real choice.
- If carriers can discriminate by choosing which buildings and residents to serve, building owners should be allowed to do the same.

3. **Scope of Easements.**

- The FCC cannot expand scope of the access rights held by every incumbent to allow every competitor to use the same easement or right-of-way. Grants in some buildings may be broad enough to allow other providers in, but others are narrow and limited to facilities owned by the grantee.
- If owners had known governments would allow other companies to piggy-back, they would have negotiated different terms. Expanding rights now would be a taking of private property.

4. **Demarcation Point.**

- The current demarcation point rules work fine because they offer flexibility. There is no need to change them.
- Each building is a different case, depending upon owner’s business plan, nature of the property and nature of the residents in the building. Some building owners are prepared to be responsible for managing wiring while others are not.

5. **Exclusive Contracts.**

- We have always attempted to maintain quality of service for our residents. The ability to negotiate an exclusive contract for our residents gives us substantial leverage. When we can negotiate on behave of the whole apartment community. The market place indicates that quantity at many cases equals quality. If a telecommunications provider understands that they are going to receive access to two hundred apartment units, they are more willing to negotiate price as well as level of service.

6. **Expansion of Satellite Dish Rules.**

- We are opposed to the existing rules because we do not believe Congress meant to interfere with our ability to manage our properties.
- The FCC should not expand the rules to include data and other services because the law only applies to antennas used to receive video programming.
- We have had several instances in which residents have hung satellite dishes on their patio fences and strung the cable from their apartment unit to that dish in less than a safe manner. The potential for liability and personal injury is significant. In addition, if the owners do not have control over installation, damage to the property and/or its residents and visitors could be substantial.

In conclusion, we urge the FCC to consider carefully any action it may take. I wish to thank you for your attention to our concerns.

Very truly yours,

WALLICK PROPERTIES, INC.

Agent

A handwritten signature in black ink, appearing to read "L J Phillips", is written over the typed name.

Lee J. Phillips, CPM

Vice President & Treasurer

LJP/km